Florida's Request To Assume Administration of a Clean Water Act Section 404 Program

Summary of Major Comments

Earthjustice (DCN 0386-A1)

"Florida's application must be denied for at least three reasons: (1) the submission is not complete, (2) the proposed program is not as stringent as federal law, and (3) Florida is not equipped to administer and enforce Section 404."

- FL has failed to protect the environment so is not competent to take on the program.
- It has been a flawed public process.
- The application is deficient/incomplete.
- FL lacks the legal authority to take on the program.
- There is inadequate staffing and funding.
- The scheme fails to ensure protection of listed species under ESA.
- FL cannot properly enforce the program.
- Jurisdiction (assumable v. retained) is flawed.

Defenders of Wildlife (DCN 0346-A1)

EPA must deny Florida's request to assume control of section 404 permitting in the state.

- The agencies have violated the ESA by failing to consult on all species and critical habitat in the affected area and by relying on an illegal its.
- FDEP has also failed to demonstrate that it can meet the no-jeopardy mandate prescribed in the 404(b)(1) guidelines.
- FDEP furthermore has no realistic plans for obtaining the necessary resources to implement the Florida program, and it cannot even maintain an acceptable enforcement process for the programs currently under its jurisdiction.

"Rather than hand over the reins to a state that is out of its depth, the Army Corps should work with Florida on expanding the scope of its SPGP to allow for a more streamlined permitting process in the state.

Finally, if the EPA does not deny Florida's request, it is legally required to provide the public with the programmatic BIOP and statewide its that will serve as determinative factors in the EPA's decision on for the assumption application. EPA must then ensure that the public has 45 days to comment on the Florida program once it obtains this necessary information."

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